IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1606 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

BACHUBHAI VALJIBHAI - Respondent(s)

==========

Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 24/10/2005

CAV JUDGMENT

1.By filing this petition under Article 227 of the Constitution of India, the petitioner – Gujarat State Road Transport Corporation has prayed to issue

appropriate writ, order or direction quashing and setting aside the impugned award dated 31.03.1992 passed by the Industrial Tribunal, Rajkot in Reference (ITR) No. 247 of 1987.

2. It is the case of the petitioner that the respondent is an employee of the petitioner – corporation and when he was on duty on the route from Veraval to Kotda road as a conductor, the bus was inspected by the Inspecting party wherein it was found that the respondent collected fare of Rs.1.50 ps., per ticket from four passengers but did not issue tickets to them. The charge sheet was issued against him and after following the due procedure and giving opportunity to the respondent to defend his case, the charges levelled against him were proved. Therefore, a show cause notice dated 3.3.1983 was issued to the respondent to show cause as to why he should not be dismissed from service. Though the show cause notice was received by the respondent on 10.3.1983, the respondent did not reply to the same and ultimately he was dismissed from service on 13.04.1983.

3. It appears from the record that the respondent challenged the said removal order dated 13.04.1983 by filing appeal before the First Appellate Authority,

wherein the said order of dismissal was set aside and the penalty of stoppage of four increments with future effect was imposed and it was also directed that the intervening period i.e., from the date of dismissal and the date of reinstatement be treated as Leave Without Pay. Pursuant to this order, the respondent was reinstated in service and the period from the date of dismissal to the date of reinstatement i.e., from 13.04.1983 to 28.10.1983 was treated as leave without pay. However, the respondent herein preferred second appeal against the order of the first appellate authority dated 28.10.1983, which came to be rejected by the Second Appellate Authority. Thereafter, the respondent raised the industrial dispute, which was numbered as Reference (ITR) No. 247 of 1987 before the Industrial Tribunal, Rajkot. The Industrial Tribunal, Rajkot, by order dated 31.03.1992, quashed and set aside the order of the First Appellate Authority of the petitioner – Corporation and imposed penalty of stoppage of two increments with future effect.

4. Being aggrieved and dissatisfied by the judgment and award dated 31.03.1992, the petitioner has preferred the present petition under Article 227 of the Constitution of India for the aforesaid relief.

5.It is submitted by the learned advocate appearing for the petitioner that the respondent workman had not challenged the departmental inquiry, and, therefore, the Industrial Tribunal ought not to have entered into the order of the First Appellate Authority. It is submitted that once the Industrial Tribunal has found that the respondent had not issued the tickets, though the respondent had collected the fare from the passengers, the Industrial Tribunal has committed an error by imposing the penalty of withholding of two increments with future effect. It is submitted that since the respondent workman has not worked for the period from 13.4.1983 to 28.10.1983, the Industrial Tribunal has committed serious error in directing the petitioner not to treat the said period as leave without pay. It is, therefore, requested to allow the present petition.

6.On the other-hand, though served nobody appears on behalf of the respondent workman.

7.I have given my thoughtful consideration to the submissions made by the learned advocate for the petitioner and also perused the material on record.

8. The Industrial Tribunal has come to the conclusion that the concerned workman has collected Rs.1.50 from

the concerned passengers and has not issued the tickets to them till the time of checking, and, therefore, the concerned workman is guilty of misconduct and negligence. It is also recorded by the Industrial Tribunal that none of the defence of the concerned workman can be believed considering the facts of the case. It is required to be noted that at this stage that the concerned workman has been reinstated in service after the order of the first appellate authority and since then he is in continuous service, and, therefore, it would not be just and proper in the facts and circumstances of the case to uphold the first order of dismissal passed by the petitioner Corporation.

9. Now, the question remains whether the punishment awarded by the Industrial Tribunal is just and proper or not ? As stated above, the Industrial Tribunal has definitely come to the conclusion that the respondent workman is guilty of misconduct and negligence and though he has collected the fare from the concerned passengers, he has not issued the tickets to them till the time of checking. Under the circumstances, the punishment awarded by the Industrial Court is required to be modified by imposing the penalty of withholding

of four increments with future effect instead of two increments with future effect so that there may have some deterrent effect upon the concerned workman. Further, the period spent under the order of dismissal by the concerned workman is also required to be treated as the period spent as leave without pay.

10. In the result, this petition is allowed. The judgment and order passed by the Industrial Tribunal, Rajkot dated 31.3.1992 is modified to the effect that instead of imposing the penalty of withholding of two increments with future effect, there shall be penalty of withholding of four increments with future effect and further the period spent under the order of dismissal by the respondent workman shall also be treated as the period spent as leave without pay.

11. Rule is made absolute to the aforesaid extent with no order as to costs.

(SHARAD D DAVE, J)

srilatha